



King County

Department of Executive Services

Inquest Program

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INQUEST INTO THE DEATH OF EUGENE DEWAN NELSON INQUEST # 417IQ2075

PRE-HEARING CONFERENCE ORDER

December 16, 2022, 10:00 a.m.

Family of the decedent:	The Family of Eugene Dewan Nelson represented by Teri Rogers Kemp (family not present at this hearing)
Law enforcement officers and Employing government department:	Kent Police Department and Officer John Waldo and Officer Jacob Reed represented by Jeremy Culumber (officers not present at this hearing)
Inquest Administrator:	Robert McBeth
Inquest Program Attorney:	Claire Thornton and Cady Nicol
Inquest Program Coordinators:	Flo Armah (primary, not present at this hearing); Angelina Jimeno (secondary); Kaela Reilly (backup for this hearing)

1. Motion to Disqualify Counsel

Having held a Pre-Hearing Conference on the date noted above, considered the written Motion to Disqualify Counsel for the Family of the Decedent and the Family's Response Re: Motion to disqualify, the oral arguments of counsel, and relevant legal authority, Inquest Administrator (IA) McBeth hereby orders that the Motion to Disqualify Ms. Rogers Kemp is DENIED.

a. Relevant Legal Authority

The Executive Order permits six parties to participate in the inquest: the "family of the deceased, who shall be allowed to have an attorney(s) present"; the involved officers and their attorney(s); the employing government department and its attorney(s) or lawfully appointed

designee; the manager, who shall assign an administrator and inquest program attorney; the administrator presiding over the inquest; and a tribal representative, if applicable. EO 2.0-2.6.

The King County Code defines “Family” as “the group of those individuals *determined by the person conducting the inquest* to have a right to participate as the family of the decedent.” King County Code §2.60.052(C)(1) (emphasis added). As the person conducting the inquest, the IA must determine which individuals have a right to participate as the family of the decedent.

Under King County Charter § 895 “the county shall assign an attorney to represent the family of the decedent in the inquest proceeding, but the family has the option of accepting the attorney or not.” Similarly, the King County Code requires the Department of Public Defense (DPD) to assign an attorney to represent the family and states that “representation shall not be provided if the family does not wish to be represented by the department's attorneys.” King County Code § 2.60.052(A). Finally, the Executive Order provides that the King County Department of Public Defense shall assign counsel for the family of the decedent “unless the family indicates they have retained other inquest counsel or do not wish to be represented by the King County Department of Public Defense.” EO § 8.16. Taken as a whole, these authorities make it clear that DPD assigns an attorney to represent the family of the decedent unless the family has retained other counsel or indicates that it does not wish to be represented.

b. Identification and Representation of Nelson Family

On December 6, 2017, Todd Maybrow entered a Notice of Appearance for “the family of Eugene Dewan Nelson” in the King County District Court inquest matter. On February 10, 2022, the Inquest Program reached out to Mr. Maybrow and Mr. Culumber via email to discuss scheduling the Inquest Hearing. On February 14, 2022, Mr. Maybrow stated that he would “touch base with the Nelson family and be back in touch.” On February 18, 2022, the Inquest Program contacted Mr. Maybrow for an update and was informed that he had not yet been in contact with the Nelson family, that he would continue his efforts, and that “[g]iven the passage of time,” he would need “confirmation” before he could proceed as counsel for the family.

On March 2, 2022, the Inquest Program again contacted Mr. Maybrow requesting an update regarding contact with the family. On March 11, 2022, Mr. Maybrow sent an email informing the Inquest Program that he was able to contact members of the Nelson family and that Juan Arias would be “the point person for the Nelson family.” Mr. Maybrow provided an email address for Mr. Arias. Mr. Maybrow also stated that the “Nelson family asks the county to assign a King County Public Defender to represent the family’s interests during the inquest.”

The Inquest Program notified DPD that the Nelson Family requested an appointed attorney. Inquest Program staff continued to be in touch with Mr. Arias via email until Ms. Rogers Kemp was appointed. On April 18, 2022, Inquest Program staff requested that Mr. Arias identify his relationship to Mr. Nelson but did not receive a response to that question. In addition, on May 3, 2022, Inquest Program staff confirmed with Ms. Rogers Kemp that she was going to explore the relationship of Mr. Arias to the Nelson Family so the IA could make a determination regarding the representation of the family. A notice of withdrawal of Mr. Maybrow and substitution of Ms. Rogers Kemp was filed on May 8, 2022. No information about Mr. Arias’s relationship was ever provided. At the PHC on December 16, 2022, Ms. Rogers Kemp informed the IA that she had not had contact with Mr. Arias.

During the December 16, 2022 PHC, IA McBeth heard argument from both counsel regarding the representation of the Family. During her presentation, Ms. Rogers Kemp asserted that she represented the family. To support this assertion Ms. Rogers Kemp informed the IA she has been in contact with members of Eugene Nelson's family over the course of the last five months and that she had spoken with Mr. Nelson's brother. She also stated that no family member has asked that she not represent them or that she be disqualified.

The Inquest Program has not received any communications from any potential family members asking that Ms. Rogers Kemp be disqualified. Nor has the Inquest Program received any communication from the DPD that such a request has been made.

c. Ruling

The Motion to Disqualify Ms. Rogers Kemp is denied. Ms. Rogers Kemp has now informed the Inquest Program that she has been in contact with Eugene Dewan Nelson's brother and other family members. A brother (whether a full sibling, half sibling, adopted, or step) has a right to representation and to participate in the inquest as the family of the decedent. King County Code §2.60.052(C)(1). IA McBeth further finds that Mr. Nelson's brother has not retained other counsel or indicated that he does not wish to be represented.

2. Responsibilities of the Inquest Program

During the PHC, counsel for the Family argued that the manner in which the disqualification motion was made and addressed was offensive and racist. Counsel's argument can be found at <https://kingcounty.gov/services/inquest-program/current/417IQ2075-nelson.aspx>. The IA thanks Ms. Rogers Kemp for raising her concerns and provides the following response.

The purpose of an inquest is to ensure a "full, fair, and transparent" review of any death involving law enforcement. EO §2.2, §6.1. In order to achieve this purpose, the Inquest Program and the assigned IA must ensure, among other things:

- That implicit bias and racism do not infect any part of the proceedings and that they are immediately confronted if and when they do arise;
- That the inquest is a "fact-finding, non-adversarial process," EO §1.1; the Inquest Program strives to engage all parties in a cooperative process where all parties are treated with respect;
- That the Inquest Program has predictable and reliable processes for dealing with issues that reoccur frequently in most, if not all, Inquests.
- That all parties are identified and given an opportunity to participate.
 - This duty is usually easily satisfied because it is obvious from the discovery provided to the Inquest Program who the employing Police Agency is and who the Involved Officers are. It is often not apparent from the same discovery whether the decedent is a member of a Federally recognized tribe, so the Inquest Program must make inquiry regarding that status in every Inquest proceeding. Likewise, the discovery usually does not indicate any family members that should

be contacted in the event that an Inquest proceeding is initiated. Rather, the family identified in the discovery is often only the next of kin that was notified of the death by either the lead detective or the King County Medical Examiner's Office.

- That the process of identifying family representatives for the Inquest proceedings is consistent and free from bias and prejudice. The process of identifying Family participation has been raised in each of the Inquest Hearings that have occurred since the *Butts* stay was lifted. For example:
 - In the Lyles Inquest, the IA had to determine which family members would represent the Lyles family after multiple individuals came forward.
 - In the Butts Inquest, the IA made inquiries about how Mr. Butts's mother would prefer to be addressed and asked counsel for the Family if any other Family representatives would be present for the Hearing. Counsel identified Mr. Butts' grandmother and the IA recognized both his mother and grandmother as representatives in front of the jury.
 - In the Lightfeather Inquest, counsel for the Family informed the IA that members of Mr. Lightfeather's family would not be attending the hearing in person but were aware of the opportunity to view the proceedings via the livestream.
- That Family participation may differ among families in each Inquest with respect to a Family's desired level of participation, representation, and goals in the inquest process.
- That, although the IA strives to stay out of the relationship between the attorney and client as much as possible, the King County Code requires the IA to determine which individuals constitute family for purposes of the inquest. King County Code 2.60.052(C)(1).
- That the Executive Order also allows the family to reject representation if they so choose. EO §8.16. These authorities require the IA to obtain information that may be known only to the family attorney, such as the identity of potential family members and whether the family has rejected representation.

The request for information regarding the Family in this Inquest was not intended to shift any burden or imply any wrongdoing, but to establish a record that complies with the requirements of the King County Code and Executive Order. Representation of the family is critical to the fairness and transparency of the inquest process. Families have "a deeply personal interest in seeking justice on behalf of their family members who have been killed by law enforcement officers" that "far exceeds the interest of any other citizen in coroner's inquests." *Butts v. Constantine*, 198 Wn.2d 27, 52 (2021). The public also benefits because legal representation improves the family's ability to fully understand and participate in the inquest process and bolsters the transparency of the inquest process for the family and the public. King County Code 2.60.052(A).

The Inquest Program fell short of meeting its duty to promptly identify the Family in this inquest. When Mr. Arias did not respond to the Inquest Program's April 18 inquiry, and Ms. Rogers Kemp did not respond to the Inquest Program's May 3 inquiry, the Inquest Program should have promptly followed-up with Ms. Rogers Kemp at that time to identify Mr. Arias' relationship to Mr. Nelson. The failure to timely resolve this issue ended up compromising the non-adversarial nature of the proceedings and allowed concerns of bias to infect the process.

3. Scheduling

The Involved Officers and Employing Department have confirmed that they no longer intend to file a Motion to Strike the Inquest based on the date of the inquest.

The Family has indicated that additional time is needed for expert consultation. IA McBeth hereby orders that if the Family intends to request that the IA call an outside expert as a witness at the inquest, that request must be made by 5:00 p.m. on March 1, 2023. Any such request must include sufficient information for the IA to determine the expert's qualifications and relevance, including the anticipated scope of testimony.

Dated: January 4, 2023



Inquest Administrator Robert McBeth